



INTERNATIONAL TRADE COMMISSION

Certain Balanced Armature Devices, Products Containing Same, and Components Thereof [Investigation No. 337-TA-1186]

Notice of a Commission Determination to Review in Part a Summary Determination Finding a Violation of Section 337; Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a summary determination (“ID”) (Order No. 50) of the presiding administrative law judge (“ALJ”), finding a violation of section 337. The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436, telephone (202) 205-2737. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On November 29, 2019, the Commission instituted this investigation based on a complaint filed by Knowles Corporation and Knowles Electronics, LLC of Itasca, Illinois, and Knowles Electronics (Suzhou) Co., Ltd. of Suzhou, China

(collectively, “Knowles”). 84 FR 65840 (Nov. 29, 2019). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, due to the importation into the United States, sale for importation, or sale in the United States after importation of certain balanced armature devices, products containing same, and components thereof by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry. *Id.* The notice of investigation named twelve (12) respondents, including Shenzhen Bellsing Acoustic Technology Co. Ltd. of Shenzhen, China, Suzhou Bellsing Acoustic Technology Co. Ltd. of Suzhou, China, Dongguan Bellsing Precision Device Co., Ltd. of Dongguan, China, and Bellsing Corporation of Lisle, Illinois (collectively, “Bellsing”); Liang Li (a/k/a Ryan Li) of Suzhou City, China (“Mr. Li”); Dongguan Xinyao Electronics Industrial Co., Ltd. of Dongguan, China (“Xinyao”); Soundlink Co., Ltd. of Suzhou, China (“Soundlink”); Magnatone Hearing Aid Corporation d/b/a Persona Medical and InEarz Audio of Casselberry, Florida (“Persona”); Jerry Harvey Audio LLC of Orlando, Florida (“Harvey”); Magic Dynamics, LLC d/b/a MagicEar of Clearwater, Florida (“MagicEar”); Campfire Audio, LLC of Portland, Oregon (“Campfire”); and Clear Tune Monitors, Inc. of Orlando, Florida (“Clear Tune”). *Id.* The Office of Unfair Import Investigations (“OUII”) is also a party in this investigation. *Id.*

Xinyao, Soundlink, MagicEar, CampFire, Persona, Clear Tune, and Harvey were all terminated from the investigation based on the issuance of consent orders. *See* Order Nos. 37-40, *unreviewed by* Comm’n Notice (Nov. 23, 2020); Order Nos. 34-35, *unreviewed by* Comm’n Notice (Nov. 19, 2020); and Order No. 28, *unreviewed by* Comm’n Notice (Sept. 20, 2020).

On June 1, 2021, the ALJ issued the subject ID. On June 11, 2021, Bellsing and Mr. Li filed a joint petition for review. On June 21, 2021, OUII and Knowles filed responses.

Having reviewed the record of the investigation, the ID, and the parties’ submissions to the ALJ and the Commission, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review (1) whether Bellsing can participate in

briefing on remedy and bonding before the ALJ (ID at 4) and in briefing on remedy, the public interest, and bonding before the Commission; (2) importation; (3) use by Mr. Li of Representative Trade Secret Nos. (“RTS”) 1-10 (ID at 35-36, 41-42, 49, 56-57, 61, 72-73, and 84-85); (4) all findings related to RTS No. 6; and (5) domestic industry. The Commission also reviews the issues raised in the parties’ arguments relating to due process, comity, and collateral estoppel.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record. The response to each question should include citations to the record and identify when the issue/evidence was previously raised before the ALJ.

- (1) Should briefing on remedy, bonding, and the public interest be considered from a defaulting party (assuming that the briefing presented by the defaulting party is not related to issues concerning a finding of violation)? Are there any policy considerations that the Commission should take into account?
- (2) Did Mr. Li waive the issue of whether the importation requirement has been met by Mr. Li? When was the issue first raised?
- (3) Please discuss whether the importation requirement has been met with respect to Mr. Li. Can Bellsing’s actions be imputed to Mr. Li, and if so, under what theory? Please address the record evidence and applicable case law.
- (4) Has Mr. Li used or disclosed each of the RTS Nos. 1-10? Can Bellsing’s actions be imputed to Mr. Li, and if so, under what theory? Please address the record evidence and applicable case law.

The parties are invited to brief only the discrete issues requested above (in their briefs, the parties should also address remedy, bonding, and the public interest, as requested below). The parties are not to brief other issues, which are adequately presented in the parties’ existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written

submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994). In particular, the written submissions regarding cease and desist orders should address the request for a cease and desist order in the context of recent Commission opinions. The Commission asks that any submissions on remedy address the following:

- (1) General exclusion order questions:
 - (a) Can the Commission issue a general exclusion order covering downstream products of non-respondents that incorporate articles found to be in violation of section 337? If so, under what circumstances can downstream products be covered by a GEO?
 - (b) Should the Commission consider whether non-respondents are likely to circumvent the GEO in determining whether to cover downstream products in its order?
 - (c) Should the Commission consider the approach and factors set forth in *Certain Erasable Programmable Read Only Memories (EPROMs)*, Inv. No. 337-TA-276, Comm'n Op. (May 1989), *aff'd sub nom., Hyundai Elec. Indus. Co. v. U.S. Int'l Trade Comm'n*, 899 F.2d 1204 (Fed. Cir. 1990)? Please discuss the relevant evidence in the record of this investigation and how that evidence supports the approach and factors that the Commission should use. Please also discuss the relevant statutory provisions of Section 337 and case law, including *Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340, 1357-58 (Fed. Cir. 2008).
- (2) In relation to the accused products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought and whether the inventories, business operations, or sales activities are significant.
- (3) Discuss any instances where the Commission has issued a cease and desist order to a respondent in his individual capacity and/or

an individual respondent acting on behalf of a company? In what circumstance should the Commission issue a cease and desist order directed to an individual?

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainants are also requested to identify the remedy sought and Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial

written submissions and proposed remedial orders must be filed no later than close of business on August 16, 2021. Reply submissions must be filed no later than the close of business on August 23, 2021. Opening submissions are limited to 50 pages. Reply submissions are limited to 30 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1186) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate

nondisclosure agreements. All non-confidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on August 2, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: August 2, 2021.

Katherine Hiner,

Supervisory Attorney.

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